



April 28, 2020

Submitted Electronically to tracy.swalwell@iid.iowa.gov

Ms. Tracy Swalwell
Iowa Insurance Division
Two Ruan Center
601 Locust Street, Fourth Floor
Des Moines, IA 50309

Subject: Rule Making related to Best Interest Standard for Insurance and Securities Professionals

Dear Ms. Swalwell:

These comments are submitted to the Iowa Insurance Division (Division) on behalf of the American Council of Life Insurers (ACLI)¹ regarding the above-mentioned rule making relating to proposed amendments to Chapter 15 of the Iowa Administrative Code (IAC), “Unfair Trade Practices,” and Chapter 50 of the IAC, “Regulation of Securities Offerings & Those Who Engage in the Securities Business.” We appreciate the opportunity to submit these comments.

ACLI remains committed to achieving a harmonized, national best interest standard of care for annuities and securities across all regulatory platforms. Consumers must be confident that insurance companies and insurance and securities professionals with whom they are entrusting their retirement savings are acting in their best interest and not putting their own financial interests ahead of consumers’ interests. ACLI recognizes and appreciates the Division’s efforts in furtherance of these objectives.

We commend Commissioner Ommen for his leadership at the NAIC in its development of a revised Suitability in Annuity Transactions Model Regulation (Model Regulation) that is harmonized with the Securities and Exchange Commission (SEC) Regulation Best Interest (Reg BI) and in proposing amendments to Chapter 15 of the IAC to incorporate the recent revisions to the Model Regulation.

ACLI strongly supports adoption of the proposed amendments to Chapter 15 to impose a best interest standard of care for insurance companies and professionals making a recommendation of an annuity.

ACLI appreciates that the Division’s proposed amendments to Chapter 50 would impose a best interest standard of care on broker dealers making a recommendation of a security and are intended to align with Reg BI. However, as explained more fully below, ACLI is concerned that deviations from Reg BI in these amendments may inadvertently undercut some of Reg BI’s protections and benefits for

¹ ACLI advocates on behalf of 280 member companies dedicated to providing products and services that promote consumers’ financial and retirement security. 90 million American families depend on our members for life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, dental and vision and other supplemental benefits. ACLI represents member companies in state, federal and international forums for public policy that supports the industry marketplace and the families that rely on life insurers’ products for peace of mind. ACLI members represent 95 percent of industry assets in the United States.

consumers and may initiate a patchwork of 50 different state securities rules that conflict or are inconsistent from state to state and that are duplicative and inconsistent or conflict with Reg BI.

As requested in the announcement of the rule making, ACLI requests the opportunity to participate in the hearing on the proposed rulemaking relating to the amendments to Chapters 15 and 50 of the IAC.

Proposed Best Interest Standard of Care for Insurance Professionals

ACLI commends the Division for leading the states in expeditiously proposing amendments to Chapter 15 of the IAC to incorporate the best interest revisions to the NAIC Model. ACLI very much appreciates that the proposed amendments closely track the revisions to the NAIC Model.

To avoid possible confusion, ACLI suggests modification to the Purpose and Summary to clarify that, in line with the NAIC Model and Reg BI, the proposed insurance and securities standards would prohibit placing the insurer's or financial professional's financial interest ahead of the consumer's interests, rather than ensuring or requiring that the consumer's interest is put first.

Most importantly, the proposed amendments to Chapter 15 will significantly enhance protections for lowans contemplating the purchase of an annuity and further uniform adoption of the current NAIC Model, with the best interest revisions, across the country.

Like the revisions to the NAIC Model, the proposed amendments to Chapter 15 will align well with Reg BI; and uniform adoption of the current NAIC Model across the country, coupled with Reg BI, will provide harmonized, level protections for annuities and securities purchasers across the country.

For all these reasons, ACLI strongly supports the proposed revisions to Chapter 15 of the IAC.

Proposed Best Interest Standard of Care for Securities Professionals

Again, ACLI acknowledges and appreciates the Division's efforts to harmonize with Reg BI in the proposed amendments to Chapter 50 of the IAC to require a best interest standard of care in connection with the recommendation of a purchase, sale or exchange of a security. Reg BI provides both strong consumer protections and continued access to securities such as variable annuities. While the proposed regulations align with Reg BI in many ways, they differ from Reg BI in other ways that may inadvertently undercut some of Reg BI's consumer protections and benefits.

Some of the securities regulations' inconsistencies with Reg BI pose concern in and of themselves. ACLI's overarching concern, however, is that adoption of the Iowa securities regulations with the inconsistencies as a whole could initiate a patchwork of 50 different state securities rules that are inconsistent or conflict from state to state and that duplicate and are inconsistent or conflict with Reg BI. This could undercut the ultimate goals of a harmonized best interest standard of care for annuities and securities across regulatory platforms and level consumer protection across the country.

Two key examples of the proposed securities regulations' inconsistencies with Reg BI that pose particular concern are in Sections 50.104(2) and 50.104(3)(a)(5). Section 50.104(2) provides that a failure to comply *for whatever reason* with the prescribed best interest requirements in connection with a purchase, sale or exchange of a security will operate as a fraud or deceit and a manipulative, deceptive, or other fraudulent scheme, device or contrivance under Iowa law. The framing of the best interest

requirements in this manner could have significant legal consequences for broker dealers that could jeopardize consumer access to products and services.

Section 50.104(3)(a)(5) requires the producer to have a reasonable basis to believe the investor has been informed of the basis of the recommendation. This could impose a burden on broker dealers, that is not imposed under Reg BI.

If the Division has determined that separate Iowa best interest securities regulations are indeed necessary - notwithstanding the breadth and scope of Reg BI and the SEC's and FINRA's extensive guidances - ACLI strongly urges the Division to modify the regulations:

- (i) To provide for a safe harbor (or deemer of compliance) for federally registered broker dealers acting in compliance with Reg BI. Under such a safe harbor, Iowans contemplating purchase of a security would receive the best interest protections required under Reg BI, without unnecessarily subjecting federally registered broker dealers, that recommend securities in Iowa, to inconsistent and/or conflicting best interest requirements; and
- (ii) consistent with the Division's proposed amendments to Chapter 15 (in Section 15.72), and the preamble to Reg BI,² by adding language to Section 50.104(2) to provide that nothing in the proposed new securities regulations is intended to create or imply a private right of action for failure to comply with the prescribed best interest requirements.

If the Division determines not to provide a safe harbor for federally registered broker dealers as described above, we urge that the proposed regulations be modified to make them as consistent as possible with Reg BI, including modification to Section 50.104(2), as described above, to provide that nothing in the proposed new securities regulations is intended to create or imply a private right of action.

Finally, ACLI urges the Division to clarify the intended effective/compliance date of the proposed securities regulations, taking into account broker dealers' need for time to come into compliance - particularly if the Division concludes not to modify the regulations in a manner described above.

ACLI reiterates our strong support for adoption of the proposed revisions to Chapter 15 relating to the best interest standard of care for annuities and thanks the Division for the opportunity to submit these comments. We hope to have the opportunity to discuss the concerns relating to the proposed securities regulations described above with the Division as these regulations move through the regulatory process.

Respectfully,



Roberta B. Meyer
Vice President & Sr. Associate General Counsel



Vincent J. Ryan
Legislative Director

² 84 Fed.Reg. 33318, 33327 (July 12, 2019)